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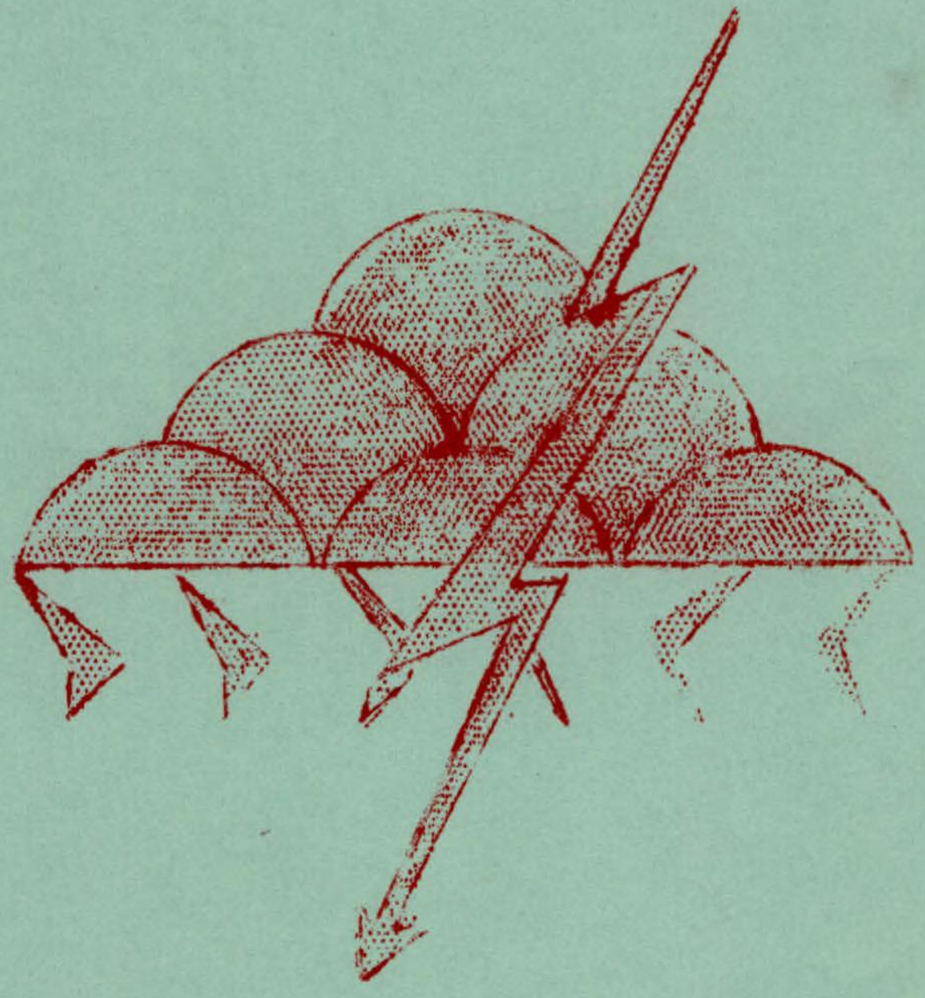
Study on Termination of Federal Supervision on Indian Reservations



Report submitted by Committee at Missoula, Montana Conference, August 13, 14, 15, 16, 1961

OCLC 16440390 WF

I N T R O D U C T I O N

The Governors' Interstate Council at its meeting in Sylvin Lake, South Dakota, September 24, 1959, authorized the Chairman to appoint a committee to make and prepare a manual for the use of states who wished to study the various problems pertaining to the TERMINATION OF FEDERAL SUPERVISION ON INDIAN RESERVATIONS. This action was motivated by the many conflicting and emotional opinions in regard to this problem. It was deemed advisable to base the study upon the experiences of the termination programs now being implemented throughout the United States. There is much confusion and misunderstanding of this program. A study of the many impacts of "Termination of Federal Supervision on Indian Reservations" upon the state and local government will provide much enlightenment to these units of government. Many mistakes have been made and the problems are greater than most states have anticipated.

This preliminary report has been made more inclusive than might seem necessary but it seemed advisable to include all the available material and delete information which did not seem pertinent in the final editing. The committee feels that another year is necessary before the final editing be made so that a thorough study can be made.

Chairman Artichoker appointed the following committee to make the study:

Mr. Harold Farley, State Dept. of Education, Boise, Idaho
Mr. James F. Frechette, Chairman Tribal Council, Keshena, Wis.
Mr. Vernon Jackson, Secretary, Tribal Council, Warm Springs, Oregon
Mr. A. H. Wright, State Dept. of Education, Salem, Oregon
Mr. S. C. DeMers, Montana Power, Butte, Montana
Mr. Maurice Powers, State Dept. of Welfare, Olympia, Washington
Mr. George Keith, State Dept. of Welfare, Madison, Wisconsin
Mr. Carlyle D. Onsrud, State Dept. of Welfare, Bismarck, North Dakota
Mr. K. W. Bergan, Coordinator of Indian Affairs, Helena,Mont.,Chairman

DEFINITION OF TERMINATION OF FEDERAL SUPERVISION ON INDIAN RESERVATIONS

What is meant by "Termination of Federal Supervision on Indian Reservations"?

The law might help us understand this term. The law for the termination of federal supervision among the Klamath Indians states its purpose in the title. The title says that it is a bill to provide for the termination of federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon, and the individual members thereof, and for other purposes. Section 1 of the proposed law further explains that besides the disposition of Federally owned property, the Federal Government will also withdraw from the administration of the affairs of said Indians and for termination of Federal services furnished such Indians because of their status as Indians. This is taken from Senate Bill 2745 which was considered by the Eighty-third Congress, Second Session, and is found in the report of the joint hearing on this legislation which was held February 23 and 24, 1954. In the hearings held February 25, 26, and 27, 1954 on Senate Bill 2750, The Termination Bill was introduced in Congress for the Flathead Indians of Montana; the title of this Bill is quite similar to the Klamath Bill. This Bill provides the termination of Federal supervision over the property of the Confederated Salish and Kootenai Tribes of the Flathead Reservation of Montana and the individual members thereof, and for other purposes. Section 1 of the Bill goes on to say that "The purpose of this Act is to provide for the termination of Federal supervision over Trust and Restricted Property of the Confederated Salish and Kootenai Indians of the Flathead Reservation in Montana, and the individual members thereof, and for the disposition of Federally owned property, acquired or withdrawn, for the administration of the affairs of such Indians and for the termination of Federal services furnished such Indians, because of their status as Indians" These two Bills give us the principle background of the objectives of this type of legislation; and probably would provide the basis for the definition of what is meant by "Termination of Federal Supervision"

Termination of special services has two principle areas of important impacts. The first is:

It would remove all Indian property, whether individually owned, or tribally owned, from the tax-exempt status of "trusteeship" and change it all into Patent in Fee property, which would be taxable on the local level.

The second Impact would:

Remove "special services" provided for Indian people. These are in the areas of Education, Health, and Welfare. The Education PROGRAM has one service which is very much appreciated by Indians, known as The School Lunch Program, which is provided to children of Indian blood without cost. Health services are provided to Indian people on reservations without cost to the indigent through Public Health Service Doctors, Hospitals, and Dentists. There is a Welfare Program on each Reservation which is financed and administered partly by the Federal Government, or by the local Tribal Council financing. There are other services provided the Indian people through the Extension Service, such as agricultural and extension loans. There are also services provided through the Road Program which builds roads on Reservations. On many Reservations there are Reclamation Projects for agricultural improvement.

The Program of this change, is admittedly a very drastic change, and involves many factors in the lives of all the people who are affected by the program. The Indian people, first of all, have been provided these services for the improvement of their standard of living. The Indian people in most states do not come under the State Programs until some special agreement has been set up between the State and the Federal Government. The Indian people check the change in policy very carefully because these changes affect the Treaty status and Legal status of the Indian

people. The people of the State are naturally interested in this kind of program because the services which have been provided the people of Indian blood are not provided to all the people of the state, except in special categories. The people of the counties are naturally interested because the counties are financed, largely, through locql taxation on property. Taking on increased burdens in all these various types of programs will increase the cost of county government, and will be a tax burden upon the property of the county. Therefore, we find many types of interest in changes as drastic as this has been intended in the develoment of the Federal Termination of Supervision of Indian Reservations.

It has been impossible for all the groups involved to come up with an understanding and solution to the many problems which might arise. In states where Termination Programs have been functioning there have been many, many meetings held for the "ferretting out" of the problems which may arise in the future, and an attempt to find the solutions. But there are many problems that no one could anticipate. For that reason, at this time it is very interesting to note that both the Klamath Termination Program, the Menominee Termination Program, and the Uintah Ouray Termination Program have been delayed and postponed several times until some of the new problems can be studied and attempts made to find the solutions. Our study will have its purpose, principally, to explain problems which may arise and to give the solutions which have used so far with success in the various Termination Programs. There also have been some rather definite steps made to find the best method of administering the assets of the Tribe when the Federal supervision has been terminated. There have been discussions in regard to setting up State Corporations for this purpose, and other types of approaches to this type of administration.

Definition of Termination

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It has been impossible for all the groups involved to come up with an understanding and solution to the many problems which have arisen in the states where Termination programs have been functioning. There have been many, many meetings held for the purpose of solving some of the problems which may arise in the future, and an attempt to find the solutions. But there are many problems that no one could anticipate. For that reason at this time it is very interesting to note that both the Klamath Termination program, the Menominee Termination program, and the Uintah Ouray Termination programs have been delayed and certain physical time limits of some of the other programs can be studied and enlarged, so that problems that arise can be solved. Our study will have the purpose, principally, to explain the problems which are noted and to give the solutions which have been used so far in the various termination programs. There also have been some alternative steps taken to find the best methods of administering the estates of the Indians after the Federal supervision has been terminated. There have been discussions regarding the setting up of State Corporations for this purpose, and other types of approaches to this type of administration.

HOUSE CONCURRENT RESOLUTION 108 — 83rd CONGRESS, FIRST SESSION

August 1, 1953

WHEREAS, It is the policy of Congress, as rapidly as possible, to make the Indian within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to the end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship; and

WHEREAS, The Indians within the territorial limits of the United States should assume their full responsibilities as American citizens:

NOW, therefore, be it

RESOLVED by the House of Representatives (the Senate concurring), That it is declared to be the sense of Congress that, at the earliest possible time, all of the Indian tribes and the Individual members thereof located within the States of California, Florida, New York, and Texas, and all of the following named Indian tribes and individual members thereof, should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Oregon, the Menominee Tribe of Wisconsin, the Potowatamie Tribe of Kansas and Nebraska, and those members of the Chippewa Tribe who are on the Turtle Mountain Reservation, N. Dak. It is further declared to be the sense of Congress that, upon the release of such tribes and individual members thereof from such disabilities and limitations, all offices of the Bureau of Indian affairs in the States of California, Florida, New York, and Texas and all other offices of the Bureau of Indian Affairs whose primary purpose was to serve any Indian tribe or individual Indian freed from Federal supervision should be abolished. It is further declared to be the sense of Congress that the Secretary of the Interior should examine all existing legislation dealing with such Indians, and treaties between the Government of the United States and each such tribe, and report to Congress at the earliest practicable date, but not later than January 1, 1954, his recommendations for such legislation as, in his judgment, may be necessary to accomplish the purposes of this resolution.

Lyle O. Snader,
Clerk of the House of Representatives

J. Mark Trice,
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ZIMMERMAN TESTIMONY REGARDING INDIAN BUREAU WITHDRAWAL

On February 8, 1947, Mr. William Zimmerman, then Acting Commissioner of Indian Affairs, submitted testimony to the effect that Indian Bureau field jurisdictions could be divided into three groups; namely, certain tribal groups which could be released at once from Indian Bureau jurisdiction; certain others in group 2 could be released within 10 years; and a third group which could only be released in a period somewhat over 10 years. The accompanying testimony to this statement, together with Mr. Zimmerman's proposals for the future of the North Dakota Indians, the California Indian, and the Klamath, Osage, and Menominee are herewith presented.*

* Source
Union Calender No. 790-82nd Congress-House Report 2503
Date: Dec. 15.1952-Committee on Interior and Insular Affairs-page 161

During the last three decades various proposals and procedures have been advanced in regard to withdrawal of the Indian Bureau from California and Grande-Ronde Siletz in Oregon. The record of these proposals is to be found in the Bureau of Indian Affairs reports from field agents and investigators. During 1952, reports were made on the conditions for withdrawal from Iowa and Michigan by an official of the Indian Bureau. In the case of Michigan several previous reports on withdrawal proposals had been presented to the Bureau. *

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THE HISTORY OF TERMINATION OF FEDERAL SUPERVISION ON INDIAN RESERVATIONS

TERMINATION OF BUREAU OF INDIAN AFFAIRS

For over a hundred years the Congress has been considering the problem of how to terminate its supervision and control over the Indians in the United States. Congressional records show the problem presenting itself in the early days and it has continued since that time. H. R. 7489, a bill to facilitate the termination of Federal supervision over the affairs of Indian Tribes and bands and individual Indians that were under the jurisdiction of the former Grande Ronde and Siletz Agencies, Oregon, was considered by the committee and reported favorably to the full committee. The committee's action in passing out this bill relating to the termination of Federal supervision and control over certain Indians in Oregon is considered a far-reaching step inasmuch as it is one of the first bills dealing with ending of the Indian problem as such. Because of the importance of this measure, there follows a section by section analysis of such bill. (See Attachment A)*

*Source
Special Report-Bulletin No. 26930 - Page No. 9
December 1952 U. S. Congress
Chairman Toby Morris, Indian Affairs Subcommittee

WHAT IS AN INDIAN?

There is no standardized definition of "Indian" suitable for all purposes. It is quite evident that several ideas are involved in this word. There is the idea of biological descent or "degree of blood" as a definite something which makes a person an Indian. This "something" would be generally based on personal appearance plus local records such as the reservation or tribal roll containing the name of the person and his degree of blood or those of his parents or other relatives. Further, there is the cultural element, illustrated in the ability to speak an Indian language or by the person's participating in the customs and culture of some recognized Indian group, such as Indian arts and crafts or taking an active part in the tribal ceremonies. Finally, there is the "Legal Indian" who is owner, or part owner of "restricted" property and a member of some tribal group holding such property.

The Bureau of the Census has mainly depended upon neighbor's recognition of the individual as an Indian in the local community wherein he resides. The Indian Bureau, on the other hand has largely depended on the biological definition in terms of degree of blood. Under the effects of different laws the same person may be considered an Indian for some purposes and a non-Indian for others. In times past, individuals with as little as one two-hundred-and-fifty-sixth part of Indian blood may have been included in allotments of tribal lands. Today the common practice is to stop at individuals of less than one quarter Indian blood. A standard definition of Indian, applicable to all cases of Federal relationships with Indians, would require a special act of Congress.

As a practical working definition suitable for ordinary Federal-Indian affairs we might assume that an Indian is a person who is a member of an Indian group or tribe which has special relations to the Federal Government in the form of treaties, legislation, or Executive orders relating specifically to that tribe. This admittedly, is somewhat unsatisfactory and serves to illustrate the danger of relying on what appear to be artificial and somewhat unreal social criteria in defining an Indian.

History of- & what is an Indian

The trouble in defining an Indian appears in redoubled form in the phrase "Indian tribe". To the average mind the word "tribe" connotes a primitive or barbarious state of scoiety which is outgrown when hunam societies become civilized. Yet the term is the only one which seems applicable to the vast majority of native Indian groups in this country. The tribe, or subdivision thereof , such as the band or the local community, is the one recognizable appurtenance of an Indian. To be an Indian is to be a tribesman. *

*Source: Union Calendar No. 790-82nd Congress, 2nd Session-House Report 2503--
Page 138. Date: Dec. 15, 1952-Committee on Interior and Insular Affairs.

KEYNOTE ADDRESS BEFORE THE NORTHWEST AFFILIATED TRIBE CONVENTION

OCTOBER 19, 20, 21 & 22, 1960
MISSOULA, MONTANA

By S. C. DeMers

America was not built by government. It was built by the energies of a self-reliant people who long ago learned the lesson of cooperation.

You are facing a great challenge of leadership and responsibility to face-up to the problems under consideration.

To me the basic problem of progress is education -- both for young people as well as adult education.

When we think of the complex problems our nation faces today such as a great need for scientists, engineers and many other needs for skilled and professional people in an age of atomic and hydrogen science and space missiles, the matter of education is brought forcibly to our attention.

When we consider the very problems of health, welfare, employment, industry, community planning and matters of our economic structure, we must recognize that the basic foundation of such problems is education and I know of no other sound solution.

It is not enough for us to go on from day to day expecting certain services from Federal, State or County governments but rather we must be willing to assume more responsibility of such services ourselves and I feel that such panel discussions as you will have at this meeting will assist greatly in finding solution of mutual problems. Woodrow Wilson once said, "The history of liberty is the history of limitation of governmental power, not the increase of it."

Fundamentally, I wish to emphasize the importance of developing forward-looking programs that will improve the social and economic structure of all Indians. This is our responsibility and we must not stand by and let time slide past.

I'm sure we agree that hindsight is sometimes better than foresight, but rather than live in the past we should apply experience and knowledge to the future. A good program is tailor-made to the needs, circumstances and aspirations of the various tribes and their individual members.

There is no "pat answer" to the problems confronting Indian people and I sincerely urge that you never advocate a policy that would be to the Indians advantage and to the disadvantage of any other group. In the contrary, I urge that you favor a policy which would take into account the common interests of Indians, States, Counties and all groups of citizens who will be affected by that policy.

What's needed now, I believe, is more public awareness of the Indian problem, a willingness on the part of all to study the questions involved and a common concern for the principles of equity and fairness. I am certain that this organization will continue to shoulder the responsibility of cooperating to the fullest for the common good.

I suggest that what is seriously needed is for the Indians to band together in unity to terminate the inferiority complexes which have set in among them so heavily over the years and which have become such a crippling handicap. The big push to de-Indianize the Indian has gone on ever since white men set foot upon our shores. But it is a great tribute to Indians that in spite of all the pronouncements, the

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decrees, the removals, dispossessions, regulations, policies, programs, gimmicks, and propaganda, Indians as a distinct cultural group still survive in America today.

On the matter of "Termination of Federal Supervision," I submit the following as reasonable minimum conditions which ought to be met:

(1) Any agreement should be bi-lateral with no threat of coercion.

(2) All claims by the Tribes against the United States be settled before any such agreement is reached.

(3) The Federal Government should bring its roads up to minimum standards before transferring responsibility for maintenance over to the counties.

(4) It should assist the Tribe in negotiating with State government and subdivisions thereof for all transfers of services and should reach agreements with States and County officials for the payment of such services transferred.

(5) It should cause to be made a complete survey and inventory of timber, mineral and other resources on Tribal lands and furnish such information to the Tribe.

(6) The Tribe should be allowed a minimum period of ten years in which to fully prepare its people for ultimate termination of Federal supervision and, if deemed advisable, to create a corporation and take over, without supervision by the Secretary of Interior, full management responsibility for all Tribal property. The trust relationship to continue during such trial period, but the U. S. to be relieved in advance of any responsibilities for errors or failures of management.

(7) Final severance of trusteeship to be accomplished by a declaration joined in by both parties, in which each party absolves the other of future responsibility.

(8) Each party to have access to the Court of Appeals or comparable body to review performance by the other party under agreement.

I am certain that anything less than the minimum conditions outlined above would result in chaos out of which order would be extremely difficult to restore.

Certainly the Indians as well as all citizens of our United States must guard against the evils of local and national disunity, misinformation and misrepresentation. From a national point of view, democratic government which is our great privilege, depends on informed understanding and vigorous, consistent attention to philosophies which may invade our individual rights.

If, during your deliberations for the next three days, the task of inquiry and study is carried forward with care and penetrating understanding, sound objectives should emerge. After the facts are presented and the objectives determined, the determined, the final step of scheduling activities over time-spans in specific, concrete terms, completes the job.

"LEAVE TO HEAVEN, IN HUMBLE TRUST,

ALL YOU WILL DO;

BUT IF YOU SUCCEED, YOU MUST

PADDLE YOUR OWN CANOE."

The following termination plan of the Menominee Reservation if of interest because it sets a pattern for the various units of government to work from.

SUMMARY OF THE PLAN FOR THE FUTURE CONTROL OF MENOMINEE INDIAN TRIBAL PROPERTY

Introduction

The menominee Indian Reservation, 365 square miles of forests and lakes, has been held in trust by the United States Government for the Tribe since 1854. After 106 years of federal supervision and protection, Congress has provided that all federal controls shall terminate on or before April 30, 1961. Termination of federal control leaves the Tribe with the responsibility for a forest valued at $30,000,000 (subject to discount because of compulsory sustained yield operation), a saw mill which with inventory is worth perhaps $4,000,000, and numerous homesteads most of which are in two villages. There are excellent potentials in the forest for scenic river and lake resorts. The Tribe also has the moral and practical responsibility for the support for about 3,500 residents. The tribal members are 3,270, but about 800 of them are non-residents. On the other hand there are about 1,000 non-tribal residents, mostly related to members. Most of the residents have been and are now dependent for support upon the lumbering and logging operations which have been managed for many years by federal and tribal officials. There are estimated to be about 800 jobs between the mills, forests and tribal government.

To handle the problems raised by the necessity of continuing the lumber operations, preserving the forest, and providing for local governmental units to maintain schools, roads, etc., a plan of business and governmental organization has been adopted by the Tribe and approved by the State of Wisconsin and the Federal Government, and special legislation has been passed by the Wisconsin Legislature.

The keystone of the business organization is to be stock corporation, Menominee Enterprises, Inc., which will take title to all tribal property, real and personal, except that going to County, Town and School District. In exchange for his undivided interest in such property, each member of the Tribe will receive common stock and income bonds of Menominee Enterprises, Inc. The securities distributable to minors and other incompetent members will be placed in a Minor's Trust, administered by First Wisconsin Trust Company of Milwaukee. The interest on the bonds, payable only out of net income at the rate of four per cent, is intended to approximate the payments presently received by members of the Tribe from the lumbering operators, while at the same time affording the maximum tax and business benefits to the corporation.

All the common stock of Menominee Enterprises, Inc., will be held for the stockholders in a voting trust, with the individuals (and the Minor's Trust) to receive voting trust certificates as evidence of their interests. The trust will operate for a maximum of three successive ten-year periods, but holders of the voting trust certificates are empowered by a majority vote to cancel the voting trust and take the stock at the end of the first and second periods. The voting trust will be controlled by seven voting trustees, selected for successive seven-year terms by members of the Tribe.

The initial voting trustees will consist of four enrolled members of the Tribe elected by the General Council and three non-tribal members selected jointly by the Advisory Council and the Coordinating and Negotiating Committee, subject to confirmation by the General Council. In case any should not be confirmed, he will be replaced by another selection by the same bodies for confirmation. It is expected that these three voting trustees will be out-standing Wisconsin citizens who

have shown an interest in and an understanding of the tribal problems. The Trustees will have the power of voting the stock and, therefcre, will meet at least once a year and at any other time when there is action required of the stockholders. Where the meeting is not necessary they may vote by mail. The position will be regarded as honorary and is not to be compensated, although expenses will be reimbursed.

The voting trustees will elect the Board of Directors of Menominee Enterprises, Inc., who will have staggered three-year terms. The Board will consist of four enrolled members of the Tribe and five other Wisconsin citizens who are experienced business men, some at least in the lumber industry. The board will probably meet at least quarterly and will be compensated reasonably. The Board will be responsible for overseeing the commercial development of the Menominee forest and scenic areas in a manner consistent with the sustained yield operations required by federal law and now regulated in detail in the Wisconsin tax law. The operating officers of the corporation, who will be selected by the Board will include experienced lumbermen who are familiar with all phases of the lumber business and who will be directly in charge of obtaining the manimum potential of the forest and the scenic areas. These officers will be requested, over a period of years, to train and develop young executives from among the tribal members. The corporate capitalization is further described below under "Financial Plan".

GOVERNMENTAL PLAN

Upon termination of federal supervision, the present Menominee Reservation will become Wisconsin's seventy-second county, to be known as "Menominee County". The government of the new county will be as nearly like that of other counties in Wisconsin as possible, and the whole county will comprise one town. The Town of Menominee (which will contain the ten surveyor townships of thirty-six square miles each) will be governed by a Town Board consisting of five members elected from five members elected from five precincts and two members at large, the one receiving the highest number of votes being the Town Chairman. It is provided that the Directors and officers of the corporation shall not be members of the Town Board. For judicial and school purposes, Menominee County will be administered jointly with similar Shawano County institutions. The county and town governments will be financed by the property taxes, most of which will bw levied on the property held by Menominee Enterprises, Inc. The Wisconsin Legislature has enacted a special assessment provision providing that in assessing any forest which is required by law to be operated on "sustained yield management", such assessment shall take into account these operational restrictions and that on this basis the assessed full value of the Menominee forest will be approximately 40% of its stumpage valuation. This statute also provides regulation by the Wisconsin Conservation Commission of the sustained yield operation.

Financial Plan

The first projected budgets for the county and town governments are based on revenues of $380,000 per year, including $150,000 for the joint school district. Until termination, federal law limits sustained yield cutting of 22,000,000 feet per year. It is recognized by all foresters concerned that 29,000,000 fet per year is permissible. Careful estimates indicate that after termination, with present standards of performance of labor and sales organization (which probably can be improved), Menominee Enterprises, Inc., should be able to earn $800,000 per year before property taxes, which will leave about $420,000 available for interest on the bonds on which the maximum requirement is nearly $400,000 per year. This corresponds roughly to the available amount which has been distributed annually as forest yield to tribal members under the designation "stumpage payments", which will,

of course, not occur after termination. Since bond interest is payable only out of net income after taxes, it is believed that the source of revenue required for governmental purposes is amply safeguarded, and that the corporation will not be unduly burdened with fixed charges.

The corporate structure of the corporation will consist of the income bonds in the principal amount of $9,810,000 (being $3,000 to each enrolled member) out of an authorized issue of $10,000,000. Assuming the forest to be valued at 40% of stumpage, it is expected that the assets of the corporation will be valued at roughly $18,000,000, being $12,000,000 for forest, $4,000,000 for mill, other buildings and inventory, and $2,000,000 working capital. The difference between this amount and the issued bonds will be represented by $327,000 shares of capital stock in the hands of the Voting Trustees which will constitute the net worth or common stock equity of the corporation. Of course any excess values which there may be, including the discount on the value of the forest will ultimately be reflected in the capital stock equity.

Provisions have been made for withdrawal of parcels up to ten acres from sustained yield, and otherwise for adjusting the sustained yield forest with the approval of the Conservation Commission.

There are restrictions on the transfers of stocks and bonds in the early years and options to the corporation and the State of Wisconsin. Moreover, the bonds may be utilized at par value by holders for purchase of homestead or farm property from the corporation. There are many other details in the Termination Plan which have not been included in this summary.

S/ James G. Frechette

MEMOMINEE INDIAN ADVISORY COUNCIL

COPY COPY

KESHENA, WISCONSIN

September 21, 1960

Mr. K. W. Bergan, Coordinator
Indian Affairs
Helena, Montana

Dear Mr. Bergan:

At long last I find time to give my views on the problems of termination of Indian Tribes as they may affect the workings of the Governor's Interstate Indian Council.

Let me begin by stating that from your letter of March 8, 1960, question No. I, because of the Menominee Indian Tribe's experience should be and is in proper relationship to the entire termination program. By that, I mean certainly the states affected have a great part to play in the working out of termination problems. The records clearly show that in the beginning we, the Menominee people, insisted that the State of Wisconsin be represented before the hearings that the Senate Interior and Insular Affairs Committee agreed to representation of the State of Wisconsin, testifying not only in behalf of the Menominee Indian Tribe, but the entire state as well. The very language of the Termination Act placed deadlines to be imposed on the state as well as the Tribe.

As we worked into the problem our experience was that the state felt it necessary to investigate every conceivable aspect, including forms of government, welfare payments for the indigent, old age payment, unemployment, health, sanitation, hospitals and medical care, utilities, all phases of education, highways, industry, employment and law enforcement and courts. I wish to point out that in the case of the Menominee Tribe, most of the criminal and election laws were already in force under permissable legislation, but otherwise, they would also be required. Of course these things would be much simpler if the tribal areas were dropped into an existing county or township, rather than have a new government created as in the case of Menonimee.

Number 2, in your letter of March 8th, "What is meant by termination"? As far as we are concerned, termination simply means the withdrawal of federal supervision and assistance as of a given date. It could have somewhat of a different meaning if the Tribes are permitted the time and opportunity to draft their own plan of termination and furthermore, if their recommendations are accepted by Congress.

Number 3, "Responsibilities which will fall onto states which usually are not anticipated". These responsibilities are outlined above in that they practically cover every field of reaponsibility formerly carried by the Federal Government.

With reference to the four outlines, we are not able to improve on the "definition of federal supervisón on Indian Reservation", "the history of the termination of federal supervision on Indian Reservations", "scope of study". However, I would add, under "IV. Problems confronting the Indian", governmental problems (Indians in minority or in majority). Likewise, under "IX. Problems of termination", I would add the following: individual occupancy and use of land. Privately owned buildings and improvements on tribal lands. Sustained yield forest- methods of operation and control. Sustained yield forest- taxation. Utilities- electricity,

water, telephone. Under "F. Health," I would add "(Medical care, hospital and sanitation)".

The report as so far written is good. Also, the report that comes direct from our Governor's representative, Attorney General John W. Reynolds dated September 14, 1960. Also, in your letter of August 3, 1960, I was asked to give a complete history of the termination history todate. This would require a great deal of back study and be a voluminous report, so I am confining it under a separate sheet in a condensed manner for the Committee's consideration.

Very respectfully yours,

JGF:lp

S/ James G. Frechette

THE STATE OF WISCONSIN
State Department of Public Welfare

MADISON (2)
August 11, 1960

Mr. K. W. Bergan, Coordinator
Indian Affairs - State of Montana
Helena, Montana

Re: Report on Termination of Federal Supervision on Indian Reservations

Dear Mr. Bergan:

I have been endeavoring to find the time to work on the preliminary draft materials which you sent with your letter of August 3, 1960.

I have been studying materials in our files in connection with the termination of federal control over the Menominee Indian Reservation here in Wisconsin. I can understand why it is difficult to come up with a statement of purpose for termination and a definition of what the word means.

Certainly it means a change in relationship between the Indian tribe and the United States Government. It involves a change of status. Instead of operating under a treaty relationship where the tribe through the treaty has been under the direct protection of the Federal Government and involved in direct dealings with the Congress and the United States Government, termination looks to absorption of the tribe into the local and state government organization, and to the Indians becoming members of the society and community where they are geographically situated. It means the loss of identity of the tribe as a governing body or organization, and to the adoption of a pattern of government, property holding, and social organization, which is characteristic of the generality of people in the state and the area where the tribe lives and has its holdings. There is much more implicit in termination than just the bare statement of the proposition that the purpose is to terminate federal control.

When it comes to enumerating problems, we encounter a problem of classification. A given problem may be legal and educational and financial. For one example, the Menominees are faced with the problem of how their territory shall be incorporated into a school district for purposes of complying with the requirements as to elementary and high school educational facilities and opportunities. The Tribe's primary role in financing education has been through allocation of tribal funds to a teaching order operating two parochial schools on the Reservation. When termination brings transfer of the property of the Tribe to a corporation which will be subject to paying taxes to the school district, township and county, new problems of fiscal relationship arise.

The tribal hospital has been operated by a nursing order and has been subsidized by the Tribe and the tribal lumber mill. The question of continuing operation of the hospital and the working out of ways of providing hospital and clinic care through payments by individual Indians who are financially able, or through public welfare in the care of those who are medically indigent, will take time and development of understanding for its solution.

Many other problems have been uncovered. One example is that of reconciling the traditional right of hunting and fishing on tribal lands heretofore enjoyed by

tribal members with conditions of private ownership by a corporation in which each Indian is a shareholder, and with requirements of the State forest crop and other Conservation laws of which advantage will be taken wherever possible.

I feel that there must be some way for you to secure an authoritative expression of materials pertinent to the Menominee Termination Program for inclusion in your report. I am accordingly referring a copy of this letter, together with the draft materials which you have sent, to Mr. John H. Bowers, Assistant Attorney General, who is on the staff of Attorney General John Reynolds, who in turn is Chairman of the Menominee Indian Study Committee. Mr. Bowers has been closely and actively engaged in working with the tribal and federal representatives as Attorney General Reynolds' delegated assistant. He has indicated an interest in seeing these materials. Perhaps he will have some suggestions to offer, and perhaps you would like to communicate directly with him.

I do not know that this letter does much for you beyond demonstrating interest and a desire to be of some assistance.

Sincerely yours,

S/ George M. Keith, Deputy Director
State Department of Public Welfare

GMKmm1
cc John H.Bowers, Asst.Atty.Gen.

COPY THE STATE OF WISCONSIN COPY

OFFICE OF ATTORNEY GENERAL
MADISON

September 14, 1960

Mr. K. W. Bergan, Coordinator
Indian Affairs - State of Montana
Helena, Montana

Dear Mr. Bergan:

Re: The Governor's Interstate Indian Council Report
on Termination of Federal Supervision on
Indian Reservations

Mr. John H. Bowers, Assistant Attorney General of my staff, and I have been reviewing the materials which you sent to Mr. George M. Keith, Deputy Director, State Department of Public Welfare, regarding the Governor's Interstate Indian Council's study of termination problems.

The basic problem in termination is the preparation of the people who are going to have to make the most critical adjustments when it comes. I am referring of course to the Indian people. Our experience demonstrates that if the idea of termination is accepted as a policy, and Congress decides that question, a program of preparation for termination must be provided by the Indian people.

It must be recognized that deadlines and imposed responsibilities motivate actions not only by the affected Tribe but by the State as well. The experience of the Bureau of Indian Affairs indicates very clearly that unless there are firm statutory timetables imposed, essential decisions will not be made and the necessary planning will not be completed. However, it must also be recognized that a program of termination which seeks divestiture of all federal responsibility and interest at once, places the Tribe, the State and the local units of government in an incredibly difficult position by forcing them to deal with a whole host of complex and difficult problems simultaneously. Such a program, furthermore, fails to take account of the fact that the unique social, economic and political predetermination status of the Indians in many ways makes them ill equipped to assume the many responsibilities of full citizenship. Accordingly there must be provided a program of orderly-phased withdrawal of federal supervision. The program must include stransitional arrangements which permits assumption of responsibility by the Tribe on a gradual step-by-step basis. It should be a program of preparation for responsibility rather than termination of responsibility. Such a program would provide the necessary opportunity to make advance preparations for final termination, it would prepare the members of the Tribe for the assumption of the responsibilities on a continuing basis as the transition continues, thereby motivating action.

Both the State and the Tribe should be consulted in advance of termination legislation. The purpose of advance consultation is not merely to obtain "consents" termination, for our experience indicates that such consent has little, if any, relationship to the actual willingness or ability of the individuals involved to meet termination. The purpose of advance consultations would be to map out a program of transitional assumption of responsibility which would take account of the social, political and economic needs of the particular State and Tribe.

Mr. K. W. Bergan, Coordinator September 14,1960

In their staff report to the Menominee Indian Study Committee, Professor Burton R. Fisher, University of Wisconsin, and John H. Bowers, Assistant Attorney General of my staff, set forth what they felt to be the general objectives of the Menominee's plan for termination. A paraphrase of their statement which follows might be considered appropriate objectives for any termination plan:

1. To bring the Indian people to responsible, full citizenship;

2. To preserve and improve the community;

3. To preserve the resources of the reservation area so as to provide a continuous source of livlihood and services to the community;

4. To stabilize and to develop the economy;

5. To protect the rights of individuals either to leave the economic entity or to continue in it on a fair basis;

6. To protect the rights of individuals to either leave the community or to continue in it on a fair basis;

7. To provide long-range transitional arrangements in government and economic spheres in order to accomplish the above objectives.

The experiences and the studies of people in Wisconsin State Government, the Menominee Indian Tribe, the University of Wisconsin staff and representatives of the Bureau of Indian Affairs would enable us to collectively spell out the above program with some detail. Regretfully, such a detailed report can not be made at this time.

We in Wisconsin do not pretend to have solved all the problems of termination. We are still seeking solutions to problems which remain and are working with the Menominees and the Bureau of Indian Affairs on a continuing basis in this effort.

We would recommend the creation of a committee such as Wisconsin's Menominee Indian Study Committee by any State faced with termination. That committee is provided for by sec. 13.352, Stats., as follows:

"***"

"(2) Composition. The committee shall be composed of the following:

(a) Three members to be named by the Menominee Indian tribe.

(b) Two members, one each from Oconto and Shawano counties to be named by the county board of those counties.

(c) Eight members representing the following state departments, such members to be the department head or a representative named by him;

1. The department of taxation;
2. The attorney general;
3. The state department of public welfare;
4. The state superintendent of public instruction;
5. The highway commission;
6. The Conservation commission;
7. The state board of health;
8. The governor's commission on human rights.

(d) Three legislators, one senator and 2 assemblymen, to be named by the legislative council."

"***"

"(6) Report. The committee shall report from time to time to the legislative council in accordance with the time schedule made possible by the action of congress.

"(7) Co-operation. The committee is directed to co-operate with the Secretary of Interior and the several state departments in formulating plans for the future control of tribal property."

In addition, however, provision should be made for the full-time services of a staff man to be devoted to the work of the committee. Express provision should be made for Federal, State and tribal cooperation.

Through the Governors' Interstate Indian Council there can be an exchange of information and ideas acquired from individual experience. The specific problems, however, must be worked out by the State and the Tribe themselves. This can be done effectively provided the Federal legislation is wisely drawn.

Very truly yours,

S/ JOHN W. REYNOLDS
ATtorney General

cc. George Keith
Dept. of Public Welfare

James G. Frechette
Keshena, Wis.

It appears to us that the problems that will confront the State upon federal withdrawal can be broken down into the following two categories:

A. Impact upon the Indians

In general, the enactment of the proposed bill will result in the removal of federal restrictions on California Indians, particularly with respect to land transactions. It will also result in the discontinuance of certain services presently rendered to the Indians by the Federal Government, primarily in the fields of education, welfare, health, and agriculture. The Indian will then be in the same position as any other citizen of the State.

Upon federal withdrawal the State must decide whether the Indian is to become a ward of the State, as he was a ward of the Federal Government, or whether he is to be treated in the same manner as other citizens of the State. The problem is then whether the State should continue to give special aid to the Indians, and if so, to what extent and in what manner.

B. Impact upon the States and Counties *

(1) The Federal Government at present pays various school districts a subvention designed to help needy Indian children take full advantage of the public educational institutions. We cannot say whether the termination of this subvention will have any serious financial consequences on the State.

(2) While it is true that numerous counties now extend assistance to all indigent Indians who are legally resident therein, other counties refuse to do so on the theory that this is the responsibility of the Federal Government. There is little doubt that federal withdrawal will impose an additional obligation on those latter counties.

(3) The Federal Government offers gratituous medical service and hospitalization to Indians. It also provides a certain amount of agricultural guidance and assistance to Indians. Whether or not the State should continue to provide such services is a matter to be considered.

(4) The Federal Government now constructs and maintains the roads in Indian country. No county has as yet assumed full responsibility for the maintenance of such roads. Federal withdrawal undoubtedly will have an effect in this field.

(5) Important stands of commercial timber are located on certain Indian reservations in California. The disposition of this timber presents a difficult technical, economic, social and administrative problem.

(6) Irrigation and water projects on Indian lands are now maintained, at least in part, by the Federal Government. What the State's policy will be with respect to such projects is as yet unknown.

(7) Many problems may result from the transfer of property presently owned by the Federal Government to the Indians. For example, due to the fact that the Federal Government has, up to now, recognized commonlaw marriages between Indians, which the State does not recognize, a serious problem as to the inheritance of Indian property may result.

Excerpts from Progress Report

We believe that an investigation of considerable scope would be required in order to determine the full extent of these problems and others which might exist. We also believe that, as part of this investigation, it would be necessary to consult with the Indians themselves and with other interested groups.

In addition the matter has been considered by the Office of the Attorney General of California. The following comments from that office indicate his views:

Two features of the present bill seem to me to be quite objectionable:
(1) The bill provides that certain of its provisions become operative at specified dates after its enactment. For example, Section 7 (a) provides that all restriction on alienation of land owned by not more than one Indian shall be removed six months after passage of the act. On the other hand, the bill requires that many things be done by the Secretary of the Interior before the Indian properties are in shape to be transferred. In his report to Congress the Secretary stated:

"In order to carry out the provision of the proposed bill and to place the reservations in a satisfactory condition prior to termination of Federal supervision additional investments will be needed in road, irrigation, and soil conservation facilities. Moreover, the termination program, which involves the preparation of final rolls, reservation plans, and land surveys, cannot be completed within the time specified in the proposed bill by the present staff of the Bureau of Indian Affairs."

Congress should either pace the operation of the bill to accord with the ability of the Interior Department to perform its administrative functions, or, alternatively, Congress should accompany the present bill with sufficient appropriations in order to permit the Interior Department to meet the deadlines established in the bill. In its present unworkable form California will have thrust upon it legal obligations which it simply cannot discharge because of the absence of administrative preparation for the turnover on the part of the Interior Department.

(2) Section 9(a) of the bill provides that all Indians land shall be tax exempt for five years after the turnover of property to the Indians, or during the minority of infants, or during the lifetime of Indians now fifty years of age or older. This provision will affect California property extimated to be worth some thirty millions of dollars. I am advised that no comparable provision is contained in the six or seven other withdrawal bills now before Congress which provide for Federal withdrawal from Indian affairs in other states. Such discrimination against California certainly deserves an explanation not presently available.

(3) Another point of concern to the State in Section 6(a), which authorizes in permissive language, the Secretary of the Interior to provide reasonable assistance to Indians in the formulation of plans for disposition and management of their property. It is recommended that this provision should be made mandatory.

The Attorney General has also submitted a comprehensive letter on the subject as Appendix "D".

The California Legislature has adopted several resolutions on the subject.

* Our information is taken from the "Program for the Termination of Indian Bureau Activities in the State of California" prepared by the California Indian Agency in 1949. We do not believe that there has been a great deal of change in Indian Problems since this publication was issued.

Excerpts from Progress Report to the Legislature by the SENATE INTERIM COMMITTEE ON CALIFORNIA INDIAN AFFAIRS (Senate Resolution No. 124) June 3, 1957.

Reasons for changes incorporated in recommended Termination Bill

It will be noted that the foregoing Termination Bill which was recommended by the Senate Interim Committee on California Indian Affairs for adoption by the United States Congress differs in some material respects from the amended draft of the proposed Termination Bill which was widely circulated throughout California. (Page 33 of this report.)

The recommended bill also differs in some material respects from the proposed Termination Bill which was redrafted to meet the objections of the Department of Interior. (Page 59 of this report.)

The reasons for the alterations in the recommended bill from the text of earlier bills are set forth in a letter from the Interim Committee Counsel to the Bureau of Indian Affairs, which letter reads in full as follows:

September 20, 1957

H. Rex Lee
Associate Commissioner of Indian Affairs
Department of Interior
Interior Building, Washington, D. C.

Dear Mr. Lee: H. R. 9512 and H. R. 9530 were introduced to the Eighty-fifth Congress at the request of Senator Charles Brown, Chairman of the California Senate Committee on Indian Affairs. This bill differs in several respects from previous drafts which have been discussed with the Bureau of Indian Affairs, and it therefore seems pertinent to furnish a brief explanation of the variances and the reasons therefor.

1. The draft of the bill which the California Senate Committee caused to be widely distributed in California provided among other things for the creation of a California Indian Appeals Board to be appointed by the Governor of California but paid from federal funds. The purpose of this board was to hear and determine appeals from the Secretary of the Interior with respect to enrollment, and it was originally suggested for the reason that it would serve as a hearing agency to interpret, and if necessary, modify standards proposed by the Department of Interior for the inclusion or exclusion of individual Indians from various tribal rolls. It was felt that by the appointment of, for example, a panel of retired judges, substantial justice could be obtained through a completely objective approach and the enforcement of uniform standards. However, the letter from the Commissioner of Indian Affairs, dated May 7, 1957, suggests as an alternative, in order to avoid federal-state conflicts, that an appeals board with similar powers be set up within the Department of Interior, but composed of persons not employed by the Bureau of Indian Affiars. The bill as submitted to the United States Congress conforms to this suggestion although we still are of the general opinion that it would be better if these appeals were handled by an entirely separate agency on the theory that the same department should not adopt regulations and then hear appeals as to their desirability.

2. Section 3 of the latest draft provided that a right-of-way over Indian trust or restricted land that is granted with the consent of the Indian owner of the land may be conveyed to the state or county for maintenance without compensation to the owner. This provision has been deleted in the bill as introduced for the reason that it was thought that, as the road building program progresses, it would be easier to pay compensation to the Indian owner and receive a voluntary release on the land than it would be to obtain his consent without the payment of compensation. In other words, if it is provided that a right-of-way with the consent of the Indian owner would provide no compensation to him, where is the incentive to grant the consent?

3. Section 4 of the latest draft contained a provision to permit the Secretary of the Interior to enter into contracts with the state or with private individuals

Excerpts from Progress Report to the Legislature by the SENATE INTERIM COMMITTEE ON CALIFORNIA INDIAN AFFAIRS (Senate Resolution [illegible]) June 3, 1957.

Reasons for changes incorporated in recommended Termination Bill

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The recommended bill also differs in some material respects from the proposed Termination Bill which was redrafted to meet the objections of the Department of Interior. (Page 59 of this report.)

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September 20, 1957

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Associate Commissioner of Indian Affairs
Department of Interior
Interior Building, Washington, D.C.

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2. Section 3 of the latest draft provided that a right-of-way over Indian lands or the Indian land itself be granted with the consent of the Indian owner of the land may be conveyed to the state or county for rights-of-way without compensation to the owner. This provision has been deleted from the bill as introduced for the reason that it was thought that, as the most reliable program progresses, it would be easier to pay compensation to the Indian owner and receive a voluntary release on the land than it would be to obtain his consent without the payment of compensation. In other words, if it is provided that a right-of-way with the consent of the Indian owner should be made to compensation to him, there is the incentive to grant the consent.

3. Section 3 of the latest draft contained a provision to permit the Secretary of the Interior to enter into contracts with the state or with private individuals

to conduct property surveys as contemplated by the act. You have advised that such language is not necessary because the secretary already has that power, should be desire to exercise the same. Nevertheless, the bill as introduced grants the specific power to enter into these contracts by statute. The reason for suggesting the insertion was to pinpoint the probable need of contracting out much of the survey work if any large scale termination is to be undertaken. It is suggested that, if a statewide termination program were commenced, there would not be sufficient personnel in the employment of the Department of Interior to promptly complete all the surveys of the exterior boundaries of the reservations, or the interior of the reservations in accordance with allotments to be made, as the case may be. At this point the entire program would fail unless it were contemplated from the beginning that special appropriations would be made available to contract out some or all of this work.

4. The technical changes suggested as Items 3 and 4 of the commissioner's letter of May 7, 1957 (to subsection 5(d) and Section 7 of the draft), have been made, and the bill as introduced conforms.

5. Section 9(c) of the draft has been amended in the bill as introduced to conform to the commissioner's suggestions.

6. Subparagraph 1 of Section 9(b) of the draft required that the plan for termination prepared for the reservations or rancharias must include the completion of specified roads, water facilities and soil conservation improvements. The bill as introduced inserts the words "and other" improvements for the reason that the proposed plan for some of the reservations might include improvements other than roads, water facilities or soil conservation.

7. Section 9(e) of the draft provided that the appeals board have the power to modify the plan submitted by the department for the distribution of assets of a reservation. The commissioner has suggested that this language be amended to provide that the appeals board will have the power to recommend to the secretary that such modification of the plan be made rather than the outright power to modify. The bill as submitted to Congress contains the suggested amendment although this was done with some misgivings for the reason that a prompt, final decision in this matter is believed to be absolutely essential to successfully carry out this program and disagreements between the appeals board and the Bureau of Indian Affairs which must be referred to the secretary for final decision could be a tendency to delay the entire matter.

8. Section 9(h) of the draft related to the requirement that the Secretary of the Interior protect the rights of individual Indians who are minors or non compos mentis. The amendments suggested by the commissioner also include the requirement that the secretary shall protect the rights of individual Indians who "in the opinion of the secretary" are "in need of assistance in conducting their affairs." The proposed amendments also provide that in addition to obtaining guardians for Indians in these categories, the secretary may protect their rights "by other means as he may deem adequate" including the creation of private trusts or the purchase by the secretary of annuities for the Indians.

The language suggested by the commissioner was substantially changed in the bill as introduced for the reason that it appears to present almost insurmountable problems of administration, and its widespread application would delay effective termination for many years. Section 9(h) of the bill as introduced simply provides that the secretary shall protect the rights of individual Indians who are minors, non compos mentis or in need of assistance in conduction their affairs by causing an application to be made to a court of competent jurisdiction for the appointment of a guardian or conservator for the estate of such Indian. The bill as introduced provides that the determination of competency and the persons to be appointed as guardians or conservators in these cases shall be governed by the same legal principals applicable to all citizens of California.

It is beleived that, if a government agency undertakes to decide in the case of each individual Indian whether or not he is capable of handling his affairs without providing a standard of competency, the whole program of terminatinn will be

Excerpts from Progress Report

to conduct property surveys as contemplated by the act. You have advised that such language is not necessary because the secretary already has that power, should he desire to exercise the same. Nevertheless, the bill as introduced grants the specific power to enter into these contracts by statute. The reason for suggesting the insertion was to pinpoint the probable need of contracting out much of the survey work if any large scale termination is to be undertaken. It is suggested that, if a statewide termination program were commenced, there would not be sufficient personnel in the employment of the Department of Interior to promptly complete all the surveys of exterior boundaries of the reservations, or the interior of the reservations in accordance with allotments to be made, as the case may be. At this point the entire program would fail unless it were contemplated from the beginning that special appropriations would be made available to contract out some or all of this work.

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It is believed that, if a government agency undertakes to decide in the case of each individual Indian whether or not he is capable of handling his affairs without providing a standard of competency, the whole process of termination will be

subjected to the criticism that it is proceeding upon the basis of whim or caprice. Certainly, reasonable men can differ as to whether an individual Indian (Or a non-Indian) is handling his affairs properly and since there are no tests which are usable, it would appear that this approach would cause endless conflict and litigation. Also, it has been estimated that four-fifths of all the Indians in California are integrated into our society and conduct their business affairs the same as other citizens, and there is little reason to believe that the remaining one-fifth cannot do so unless of course the individual is legally incompetent in the normally accepted sense of the word.

Furthermore, Section 10 of the bill provides for a three to five year intensive education program under the direction of the State Department of Education. This program as contemplated is especially designed for the orientation and integration of the Indian population of this State insofar as this has not already been accomplished. It therefore appears to us that it is better to concentrate on developing a program of business management and similar types of education for the Indian citizens than to try to determine whether each individual Indian is fully capable of handling his own affairs.

9. Section 9(j) of the draft has been retained even though the commissioner's letter suggests different language to correspond to the Rancheria Bill and to the department policy. This is one of the sections wherein it is sought to protect the water rights of Indians and is a subject which should be further discussed in greater detail by water experts. However, the language suggested as department policy does not appear to us to be practical. It provides in substance that nothing in the act shall abrogate any water right that exists by virtue of the laws of the United States and then goes on to state that, regardless of termination, the laws of the State of California shall continue to be inapplicable for a period of 15 years after conveyance of the land to the Indian owner.

It is our general understanding that while the United States claims certain paramount water rights, these are not clearly defined and are the subject of some disagreement between water lawyers. Also, it seems that the extent, if any, to which these water rights of the United States are based upon Indian water rights is uncertain and thus the respective interests of the Indians and of the United States would be difficult if not impossible to determine. Furthermore, it is our understanding that there are no prescribed procedures by which the Federal Government can allot or assign water rights to the Indians and others so that, if an individual Indian or a group of Indians are to be granted a private ownership right to use water, this must be done under some state statute or procedure. Making provisions for the granting of this right to an Indian or a tribe would seem necessary as part of a termination program since the water rights, whatever they may be, will have to be assigned to individual parcels of land as these parcels are transferred to individual Indians or to corporations as part of the termination program.

It therefore appears to us that the language suggested by the department will merely delay a final decision as to these water rights, and it is feared that the uncertainty arising in the meantime will adversely affect Indian property values and may cause considerable litigation, all of which could do serious harm to the Indians themselves.

Section 9(b) of the bill as introduced, therefore, merely provides that the laws of the State of California as to non-use of water will not apply until five years after the conveyance of title to the Indians. We feel a simple provision of this sort is better judgment, particularly when it is recalled that Section 5 of the bill establishes a joint State-Federal Indian Water Affairs Commission which is charged with the responsibility of reviewing and making recommendation upon all Indian water rights in this State. Following such recommendation, appropriate state and federal legislation can be passed to effectively dispose of the problems.

10. The draft provided for a mandatory provision that the special educational program for Indians be carried out through the California State Department of Education and provided a $500,000 appropriation therefor. The commissioner suggests that this mandatory direction and appropriation be omitted from the bill and that instead

broad authority be given to the secretary to further administer the program if he chooses to do so. The bill as introduced, however, retains the language of the draft to provide not only for the special appropriation but also for the mandatory direction of this program through the State Department of Education. The reason for this is as follows: The whole process of termination requires a severance of the relationship between reservation Indians and the Bureau of Indian Affairs. We feel that just so long as this relationship continues, regardless of the special programs undertaken by the bureau, no effective steps will have been taken toward eventual termination. Effective termination also means in our view that the one-fifth of the Indian population of this State still living on trust lands should be completely integrated into the political subdivisions of this State in the same manner as non-Indians. We feel that one of the best ways to accomplish the result is for the State Department of Education to be in full charge of the orientation program and if in the course of this program, deficiencies are discovered in local educational systems which need to be corrected to assist the reservation Indians, the State Department of Education is in the best position to do this as a matter of normal routine.

The inclusion of the special appropriation was inserted in the bill for the following reason which applies also to all other items of appropriation specified in the bill:

It was felt that Congress would like to consider with the bill the special items of cost provided therein. These items were therefore placed within the section to which they applied so that, as various witnesses discuss each section, special attention will be called to the cost, and the witness can point out not only the reason for the item but present a budget for the proposed use of the funds. Thereafter, if the inclusion of these appropriation within the bill is not consistent with federal policy, the bill can be amended to delete them and to make alternate provisions in some other manner as required by the rules of Congress.

11. Sections 11,12, and 13 of the draft have been placed in the bill as introduced. These three sections provide appropriations by the Federal Government to be paid to state agencies to aid in the transition period of the termination program.

For example, Section 11 of the bill provides an appropriation of $400,000 to defray the cost of treatment of Indians in mental institutions in this State for a five year period during which it would be expected the termination would probably be completed. The reason for this request is that under the laws of the State of California, citizens of this State, who are treated in mental institutions and who have land or other assets, are required to partially compensate the State for the cost of their care. However, trust and restricted Indian lands are not subject to these liens and therefore the State is requesting reimbursement from the Federal Government for the care of these Indians.

Section 12 provides a special appropriation to be paid to the state agency concerned with social welfare for special training of personnel to assist in the termination program. The laws of California do not differentiate between Indians and non-Indian citizens, and therefore an Indian citizen is as entitled to aid as any other citizen of this State. However, it has been said that there are special problems incident to explaining the state and local welfare program to Indians in some areas and the Department of Social Welfare therefore has requested the appropriation so that special attention may be given to training in this regard.

Section 13 of the bill provides an appropriation of $300,000 for the use of the California Department of Natural Resources to cover the increased personnel and other expenses which that department will have during the transition period while planning for termination. It is felt that in some of the Indian reservations and rancherias there will be need for state aid in matters such as timber management as the Federal Government relinquishes its responsibility over these Indian timber lands. The purpose of the appropriation is to provide extra state personnel to work with federall agencies and Indians involved so that the State's services in these fields may effectively aid in the operation of the property when federal supervision has been terminated.

Excerpts from Progress Report

The commissioner has suggested that since the Federal Government has already withdrawn from subventions in California in the fields of mental health and social welfare that it would be inconsistent to provide the appropriation requested in Sections 11 and 12 of the act. However, the provisions were placed in the bill for the consideration of Congress on the theory that although the Federal Government may have withdrawn the benefits of subventions in these fields, the burdenof providing these services remains and has been assumed by the State of California. In spite of the assumption of these responsibilities by the State, the lands which normally contribute to our tax base have been kept from the tax rolls by remaining in federal ownership and therefore it seems only fair that until this situation is corrected, subventions be provided, particularly when they will aid in the termination process.

Section 14 and 15 of the draft provided respectively for a $1,000,000 appropriation for noninterest-bearing loans to Indians for education in recognized vocational schools and a $1,000,000 revolving fund to make non-interest-bearing loans to Indians and Indian groups for promoting economic development of properties and persons affected by this act.

The commissioner has suggested that this type of an appropriation is inconsistent with the termination process, and these provisions have been omitted from the bill as introduced.

Special appropriations for tuition and economic loans to Indians have been omitted from the bill for several additional reasons. As desirable as such loans may be, it is felt that suggestions of this nature should more fittingly come from either the Indians themselves or as part of some national program such as that provided by Public Law 959, Eighty-fourth Congress, Second Session. In other words,it was felt that economic and tuition loans for Indians should not necessarily be limited to Indians who have an interest in trust land in California and thus need not be considered as part of the termination of federal supervision over these lands.

The subject of special congressional con ideration to Indians other than that involving trust lands also appears to be related to the question of various claims which have been filed by the Indians of California, and in this connection, it has been suggested that moneys remaining in the judgment fund now being held for the Indians of California could well be distributed to a nonprofit educational foundation for use as scholarships and other educational loans for the benefit of all the Indians of this State as distinguished from the relatively few who have interests in trust lands. This suggestion appears to have merit and perhaps should be the subject of separate legislation. We do not believe, however, that the field should be covered in the bill which is now being presented for general statewide termination of federal supervision over trust lands.

Section 17 of the draft has been amended in accordance with the suggestions of the commissioner.

Some of the foregoing comments represent a divergence between the views of the California Senate committee and those of the Department of Interior. However, the disagreements are not meant to be in the spirit of criticism but rather in the form of suggestions as to how a better bill can be worked out for the benefit of the Indians themselves. In addition, the members of the California Senate committee have asked me to express again their appreciation for the cooperation received from the department and for the countless hours which the representatives of the Bureau of Indian Affairs have spent in discussing the technical aspects of the distribution of trust lands in California with representatives of the State.

Yours very truly,

JOHN A. BOHN

STATUS OF TERMINATION PROGRAMS

KLAMATH TERMINATION PROGRAM
IN OREGON

June 1, 1961.

The following brief summary in regard to the Klamath Termination Program is herewith enclosed in our report.

The program is now in the final stages. On April 15, 1961, The Secretary of Agriculture published his order taking title to the unsold forest units consisting of 525,000 acres. These properties now become part of our national forest system. The withdrawing members of the tribe who elected to have their shares converted into cash received their principal payments on April 17, 1961, when over $71,500,000 were distributed to the 1660 withdrawees or their heirs. This payment amounted to $43,125 to each withdrawing individual less offsets for any obligations incurred during the termination process. Distribution totaling $2,155 have previously been paid, making each withdrawing member's cash payment $45,288. There will be an additional small payment (less than $100 each) to be made from other revenues which have accumulated to the credit of the withdrawees.

Reports from the radio and press in the Klamath Falls and reservation area indicate that the payment has been accomplished smoothly and quietly and thus far reports of irresponsible spending sprees are rare. This is no doubt due to the fact that the funds of the majority of the members were placed under trusts. Of the 1,660 withdrawing members, trusts were established for 744 minors and for 190 adults. In addition, a small number of guardianships and conservatorships were established for other adults. A total of 588 received their payments without restrictions. A significant number of these reside in Oregon communities outside of the reservation and in 18 other states. Another contributing factor in the restrained and careful use of the funds distributed has been a program of education and information conducted by the State of Oregon on the reservation. During the past year the program has emphasized banking, savings, and investments.

The remaining group of the tribe, consisting of 473 members, continue to hold their property of 145,000 acres, which is managed under a trust by the United States National Bank of Portland. Since the property was conveyed to the bank as trustee for these remaining members, the annual dividends (paid quarterly) have amounted to $1,800 for 1959, $1,600 for 1960, and will be $1,800 for 1961. Dividends for the period 1962 through 1965 are expected to be at the $1,600 per annum rate.

One of the continuing problems centers around the appraisal of the property. The original appraisal showed a so-called "realization" value of approximately $120 million. Because of complaints from some tribal members, Congress in an amendment to the Act, instructed review appraisals by three different appraisal firms. These review appraisals reduced the "realization" value to $90 million. The Klamath Indians have filed suit before the Court of Claims for additional compensation.

The administration of the Klamath termination program deserves some study because it was unusually smooth and effective. It must be kept in mind that the entire program of termination on the Klamath Indian Reservation was the will of the majority of the enrolled members of the reservation. The many objections and criticisms from the outside in regard to the program indicated coercian and pressures which motivated the decision. The opposition to the program was far greater outside the reservation than within.

The program of termination on the state level was directed by Mr. A. H. Wright who has been a representative of the State of Oregon on the Governors' Interstate Indian Council since its beginning and was one of the founders. The administration of the state activities came under his direct control. He maintained an office in the heart of the Klamath Indian reservation. The staff included a lawyer, an anthropologist, a sociologist, an agricultural extension worker and an economist, two guidance counselors and Mr. Wright. Every Indian on the reservation was known by his first name by certain members of this staff. Every home was visited many times and each family had a complete dossier with family history and other pertinent data, such as jobs held, education, work record, law and order record and personality characteristics.

The final termination has been completed and the results seem to be satisfactory in htat there was very little squandering of the money. The members have invested their money well and seem to have a good concept of living on the income from their investments. The business and professional people around the reservation have cooperated splendidly to keep all business dealing with the Klamath Indian people on a high ethical level. There was only one case of questionable ethics and the attorney involved is having his certificate to participate as a registered attorney up for consideration by the Oregon State Bar Association.

If the Klamath program can continue with such good reports the success must be attributed to the splendid administration of Mr. Wright and the strong education program he carried out in preparation for the program.

STATUS OF MENOMINEE TERMINATION PROGRAM
June 1, 1961

A recent communication from Honorable John W. Reynolds, Attorney General in the State of Wisconsin advises that the Menominee Termination became effective on April 29, 1961. At that time the reservation became Wisconsin's 72nd County. Appointments of the County and Town Officers have been completed and the State has employed a man experienced in State and local government to devote full time in assisting the Menominee Indians in the installation of their new town and county. The tribe has completed the organization of its corporation for the management of the business and private affairs of the Tribe and this appears to be proceeding smoothly as is the installation of the new town and county. The State of Wisconsin is doing everything humanly possible to provide every reasonable assurance that the Menominee Indians will succeed in their termination program.

If you refer back to report made by Attorney General Reynolds a year ago on the termination program and included as a part of this report, (pages 16-18) you will note several observations which are re-emphasized now and are included in the recommendations as No. 8, 9, and 10.

STATUS OF UINTAH OURAY TERMINATION IN UTAH
June 1, 1961

The following is a brief summary of the mixed blood Utes who withdrew from Federal Supervision under Public Law 671.

The Affiliated Ute Citizens of Utah consists of 490 members of the Ute Indian Tribe and one-half or less Ute Indian blood. The final roll for the mixed blood group was published in April, 1956. At the present time there are 321 adult members, 153 minors and 16 deceased members.

The program of termination on the state level was directed by Mr. A. H. Wright who had been representative of the State of Oregon on the Governors' Interstate Indian Council since its beginning and was one of its founders. The administration of the state activities came under his direct control. He maintained an office in the heart of the Klamath Indian reservation. The staff included a lawyer, an anthropologist, a sociologist, an agricultural extension worker and an economist, two guidance counselors and Mr. Wright. Every Indian on the reservation was known by his first name by certain members of this staff. Every home was visited many times and each family had a complete dossier with family history and other pertinent data, such as jobs held, education, work record, law and order record and personality characteristics.

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If the Klamath program can continue with such good reports the success must be attributed to the splendid administration of Mr. Wright and the strong education program he carried out in preparation for the program.

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If you refer back to report made by Attorney General Reynolds a year ago on the termination program and included as a part of this report (pages 15-19) you will note several observations which are re-emphasized now and are included in the recommendations as No. 1, 9, and 10.

STATUS OF UINTAH AND OURAY TERMINATION
UTAH
June 1, 1961

The following is a brief summary of the mixed blood Utes who withdrew from Federal supervision under Public Law 671.

The Affiliated Ute Citizens of Utah consists of 490 members of the Ute Indian Tribe all one-half or less Ute Indian blood. The final roll for the mixed blood group was published in April, 1956, at which time there were 236 adult members, 254 minors and [illegible] members.

Division from the full blood group was started in April, 1956. All tangible assets were divided on a percentage basis, 27.16186 going to the mixed blood group. The Affilitated Ute Citizens have sold and converted to cash all said assets. The money has then been distributed in per capita payments. A total of $15,279.00 has been paid per member since the beginning of the division, making an amount of $7,486,710.00 that has been distributed to this group.

In addition, their range land was set up in two livestock corporations, the Rock Creed Cattle Corporation and the Antelope Sheep Range Company. Each mixed blood member has a share in each corporation. The Ute Indian Tribe is in the process of buying these shares from said members at the price of $550.00 per share or a total of $1,100.00. There are, at the present time, very few members who have not sold this asset.

All minerals, future judgements against the U. S. or other undivided assets are reserved in a sorporation known as the Ute Distribution Corporation. This corporation has a board of five directors and will handle their business through the First Security Bank of Utah after termination. Termination date is set up to be August 27, 1961.

A trust agreement was set up with the First Security Bank of Utah for minors and non compis mentis for the purpose of handling their trust assets. There is also an agreement in the making with the First Security Bank to take over the unpaid loan accounts of the mixed blood group.

Some of the members have used their funds to buy their assignments or other land, some have applied at least half of their per capita payments on repayments of their tribal loans. Quite a number have used their funds to further their education after high school. Still others have used them to acquire better living quarters.

The full blood group have an enrollment of 1,478 members. The mixed bloods used their share of the Claims Commission award for a per-capita payment. The full bloods used a portion for per-capita payment and a portion for their tribal program and tribal enterprises.

An evaluation of the Uintah-Ouray termination is now available at this time by any authoritative agency.

STATEMENT BY MAURICE POWERS
Committee Member from the State of Washington

"Termination of federal trusteeship should take place when the need for it no longer exists either because the persons whose property is held in trust are determined to be able to manage the property or because an alternative trust or corporate arrangement has been developed to protect the interests of the owners. However since federal trusteeship is linked with other federal responsibilities to Indians not directly related to property, the word "termination" does not adequately describe the change in relationships which should occur. This process should be thought of as transition, not termination. Transition implies the transfers of necessary functions from the federal government to other levels of government by an orderly process and requires the assurance that the transfer of function is understood and agreed to by all parties concerned--the Indian people, the states affected, and their political and functional subdivisions. This kind of transition cannot be accomplished by the unilateral action of the federal government and is dependent upon the willingness and capacity of the states and their subdivisions to guarantee to the Indian people the full range of state and local services extended to other citizens. We cannot countenance the "termination" of services to the Indian people but we can and should encourage the transfer of responsibilities to more appropriate levels of government as rapidly as there are assurance that these responsibilities will be met elsewhere."

RECOMMENDATIONS

1. Termination of federal trusteeship over property of Indians must not be confused with continuation, expansion, or elimination of federal services provided to Indian people on the basis of special need. Congressional action in one area does not necessarily involve action in the other. A tribe may be ready for termination of federal trusteeship before it is ready to relinquish special services and vice versa. Evaluation of the need for federal services, with respect to the readiness of states to assume responsibility for such services, must be carried independently of evaluation of readiness for termination of trusteeship.

2. Everyone concerned must realize that termination will bring about a social change which is difficult to visualize. Much study should be given by experts in social problems to determine what social changes will occur and what specific activities can be initiated to assist groups to understand and accept the social changes which will take place.

3. No termination program should be forced upon Indian people against the will of the majority, and that Indian people should be prepared to accept their responsibilities when a termination program is initiated.

4. Haste is the greatest hazard to successful planning for termination. Time should be provided for thoughtful planning and preparation by the Indian people, the State, county, community and the Federal Government.

5. No termination should be accepted by any State until it is prepared to administer a strong education program among the Indian people.

6. There should be definite understanding as to <u>when</u> Indian property goes on the tax rolls.

7. The termination legislation should provide for a program of orderly phased withdrawal of federal supervision. This should include a phasing-out not only of the supervisory role of the federal government as such but also for a phasing-out of the economic role of the federal government in such sensitive areas as health, education and welfare, to assure that such programs will be fully and adequately provided in depth and breadth comparable to adjacent communities.

8. Any termination must recognize that federal supervision over Indian reservations has created unique social and economic problems for the Indians which, in many ways, make them ill-equipped to assume the many responsibilities of full citizenship all at one time. There exists, therefore, a continuing federal responsibility to provide economic and technical assistance on a phase-out basis during termination.

Respectfully submitted to the Governors' Interstate Indian Council
August 16, 1961

Harold Farley, Idaho
Vernon Jackson, Oregon
Stephen C. DeMers, Montana
George Keith, Wisconsin
K. W. Bergan, Montana, Chairman
James F. Frechette, Wisconsin
A. H. Wright, Oregon
Maurice Powers, Washington
Carlyle D. Onsrud, North Dakota

Accepted for information purposes only and not for policy at the Governors' Interstate Indian Conference at Missoula, Montana, August 16, 1961

K. W. Bergan, Secretary, State Capitol, Helena, Montana

OBSERVATIONS

1. Termination of Federal supervision on an Indian Reservation should not come to a reservation until Congress determines that the people of the reservation are ready for such a program. It behooves the Indian people, the states, counties and communities to look into the future and to prepare for the day when this situation may present itself.

2. Indian leaders must study the problems which will confront their people when such a program is initiated and try to prepare their people through educational media to accept this change and be aware of its implications.

3. State government must study completely and carefully the impact that termination will have upon the state and be prepared to accept the responsibilities which termination of an Indian group will bring. If Federal financial assistance is needed and desired, it should be anticipated and requested before termination becomes a reality.

4. Communities must study and accept the responsibilities which they must assume if such a change takes place.

5. A complete study of the economic resources of the reservation areas should be made and recommendations for development given before the Federal Government Terminates its supervision.

6. Per capita payment based on distribution of tribal resources should never be a motivating force in bringing about termination.

7. The taxation responsibility which comes with termination should be fully understood by the Indian people so that Indian fee patented land is not lost due to misunderstanding and non-payment of taxes.

8. The adjudication of treaty rights and claims for compensation which include hunting, fishing, water, irrigation, and education, should be the definite responsibility of all parties in any termination program.

9. No state should encourage termination of an Indian tribe until it is willing to accept responsibility for a strong health program among the Indian people. This program should include public health programs and health education programs.

10. A complete tribal census should be taken before termination of an Indian tribe is decided by Congress.

11. States in which termination of Federal responsibility is being contemplated should realize and be willing to accept responsibility for indigent Indians, road upkeep and law enforcement.

12. Programs of Termination up to this point have served the purpose of pinpointing problems which are apt to arise. The pioneering in this area will henceforth be based on experience. All groups are indebted to these participants in these programs for their contibutions to this study.